IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION(M)NO.155 OF 2005
IN
FAMILY COURT APPEAL NO.80 OF 2004

Leela Mulukutla ...Applicant
Vs.
Ravi Ram ...Respondent

Ms. Kalra Adv. for Applicant
Mr. Godbole Adv. for Respondent

CORAM: H.L.GOKHALE &
ROSHAN DALVI,JJ.
DATED: 25TH OCTOBER, 2005

P.C.

1. Heard Ms. Kalra in support of this Civil Application. Mr. Godbole appears for Respondent. Affidavit in reply is filed and it is taken on record. This application seeks an appropriate modification in the order that this Court has passed on 19th July, 2004 to which one of us (H.L.Gokhale,J.) was party. Under that order the appeal filed by the father and mother were admitted. The mother was permitted to take the children to Nairobi where she has got an employment. In as much as the father was likely to be in India, the Counsel appearing for the mother made a statement which was recorded at para 20 of that order that the mother will have no objection to the father having a larger access in Christmas and Summer vacation. She agreed that he may take the children for access for 3/4 of each of the vacation.

2. As far as the weekly access is concerned in as much as he was not going to Nairobi, she agreed that as and when he comes to Nairobi he may have an access to the children every week. We are now told that the father has shifted to Nairobi in June 2005. He appears to be there for good and not on any temporary basis. It is submitted that 3 children are in VIIth, Vth and IIIRd standards and therefore, the access at the end of every week for months together affects their studies.

3. Ms. Kalra submits that in as much as the father is in Nairobi for quite a long time, the mother can ask for reduction in the access during the vacation also. Her request however, is only a limited one namely that the access at the end of every week be curtailed and he may be permitted to take the children with him only on 2 weekends and not at every weekend.

4. Mr. Godbole learned Counsel appearing for the Respondents opposes this prayer. He submits that the order which was passed earlier was the just and proper order. The father also has affection for his children and if he is in Nairobi for a longer period there is no reason why the access granted to him should be curtailed.

5. We have noted the submission of both the sides. The order with respect to custody and access

are always interim orders, subject to appropriate modifications which the circumstances may require. This has been laid down by the Apex Court in the case of **Jai Prakash Khadria Vs. Shyam Sundar Agarwalla & Ors. reported in (2000) 7 SCC 598**, which is quoted in para 17 of the earlier order.

6. In the facts and circumstances of this case we accept the submission of Ms. Kalra. We do see the anxiety of the mother that the studies of the children should not suffer by this access at the end of every week. In the circumstances, we modify the order passed by this Court earlier on 19th July 2004.

7. The father will have access on 2nd and 4th Saturday hereafter instead of at the end of every week as stated above. Rest of the earlier order will continue as it is.

8. The other request made by Ms.Kalra is that when the father takes the children for access during the vacation he will inform the mother as to when he is proposing to take them and bring them back and as to where he will stay with them.

9. The other request of Ms. Kalra is that as against what is provided in the earlier order, the father should intimate his programme for vacation a little more early. Mr. Godbole fairly states that he

will inform the programme 4 weeks earlier in advance. We further add that when the father takes the children for vacation he will give acknowledgement in writing. Similarly when he returns the children to the mother, mother will give an acknowledgment that the children are returned to her. C.A. disposed of.

10. Mr. Godbole applies for the stay of this order, which request is rejected.

(H.L.GOKHALE,J.)

(ROSHAN DALVI,J.)